

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding
Broadband Infrastructure Deployment and to
Support Service Providers in the State of
California.

Rulemaking 20-09-001

**COMMENTS OF THE COUNTY OF SANTA CLARA
ON ASSIGNED COMMISSIONER RULING**

COUNTY OF SANTA CLARA

DIGITAL EQUITY CONSORTIUM

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October 29, 2021

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**COMMENTS OF THE COUNTY OF SANTA CLARA
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A. Introduction

The County of Santa Clara Digital Equity Consortium, on behalf of the County of Santa Clara (“County”), respectfully submits the following comments on the Assigned Commissioner Ruling (“Ruling”), filed on September 23, 2021, as part of the California Public Utilities Commission’s (“Commission’s”) Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California. The County appreciates the opportunity to provide comments on the Ruling and strongly supports efforts from the Commission to expand access to broadband to households across the state.

B. Background

Santa Clara County has a population of approximately 1.95 million residents living within approximately 1,312 square miles of land.¹ It is one of the most populous counties in the state, and the most populous county in Northern California, making up about one fourth of the Bay Area’s total population.² It consists of both densely populated urban areas, such as the City of San José, and sparsely populated rural areas, such as the Coyote Valley.

While Santa Clara County is widely known as the heart of Silicon Valley, there are stark disparities in access to broadband internet across the county. For example, almost 100,000

¹ California Department of Finance, *E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change — January 1, 2020 and 2021* (May 2021), <http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-1/>.

² *Id.*

people in Santa Clara County do not have access to the internet. Almost 130,000 more individuals have access only through a cellular data plan.³

The high cost of broadband deployment in certain areas outside of the county's urban core is a significant barrier to connecting many communities in Santa Clara County. This challenge is particularly acute in rural communities south of San José, and in communities in the Santa Cruz Mountains. Funding for open access last mile connections will enable the County and local service providers to improve broadband access to unserved and underserved residents throughout the county.

C. Discussion

1. Compliance with Federal Guidance

What modifications should be made to the Staff Proposal to improve consistency with Part 35 of Title 31 of the CFRs? Please provide an explanation of any suggestions, as well as edits in redline as an attachment to your comments.

Project Technology Choice

The Commission should revise the Staff Proposal to provide partial credit to other technologies that can demonstrate that they have similar capacities to fiber. The Interim Rule encourages recipients "to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities."⁴ To this end, Staff Proposal awards 10 points to fiber based projects.⁵ Non-fiber based projects will not receive these points.

While fiber is widely acknowledged as the technology currently able to transmit the most data most efficiently, and the most scalable to accommodate the growing need for broadband, new technologies are constantly coming onto the market. For example, in 2020, the Federal Communications Commission authorized wireless service providers to use new spectrum to deliver internet access through Citizens Broadband Radio Service (CBRS).⁶ Carriers are

³ U.S. Census Bureau, 2019 American Community Survey (2020). There are 32,753 households with no internet access, and 43,756 households who have a cellular data plan, and no other type of internet subscription. Table B28002 Presence and Types of Internet Subscriptions in Household, Santa Clara County, California. The average household size is 2.94 persons. Table S1101 Households and Families, Santa Clara County, California.

⁴ Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule 86 Fed. Reg. 26805 (May 17, 2021).

⁵ Staff Proposal at A-7.

⁶ Federal Communications Commission, *FCC Authorizes Full Commercial Deployment in 3.5 Ghz Band, Advancing American 5g Leadership* (Jan. 27, 2020), <https://www.fcc.gov/document/fcc-authorizes-full-commercial-deployment-35-ghz-band>

currently deploying CBRS networks that provide download speeds of almost 700 Mbps.⁷ The Santa Clara County Office of Education recently set up a Citizens Broadband Radio Service network to provide wireless internet to two thousand students and their families across eight school sites. Other providers are using satellites to provide speeds of at least 100 Mbps, with the prospect of increased speeds as the technology develops.⁸ The Commission could evaluate the technology used and award points based on its capacity and scalability; older technologies such as DSL and copper wire connections should not receive points. Allowing partial credit for wireless projects that have similar capacity and scalability to fiber would encourage innovation and investment in new technology, while allowing applicants greater flexibility in designing projects. Partial credit is also consistent with the Interim Rule’s mandate to “prioritize” fiber.

Additionally, many of the hardest to reach households in Santa Clara County are challenging due to low population densities and difficult topographies. For these more isolated residences, wireline connections are not currently practical. In some cases, a wireline connection to a single residence could require laying hundreds of feet of fiber up a hill or through a farm. While a fiber based middle mile project could reduce this burden, wireless connections are the only practical way to cover the last mile.

2. Priority Project Areas

What information should the Communications Division Staff take into consideration in developing these priority areas?

In determining priority project areas for Federal Funding Account assistance, the Commission should take into consideration the following factors and criteria in developing priority areas: rural areas, tribal communities, areas prone to natural disasters (wildfires, floods, earthquakes), areas with a high concentration of seniors (i.e., ages 65 plus), areas with slow economic growth or blight, areas containing high population density, areas with a high concentration of at-risk youth/students, areas with high incidence of residents with higher risk of poor health, areas at or below the median household income, areas with lower bandwidth/speeds, areas with proximity to anchor institutions such as schools, hospitals, health clinics, public housing, and libraries, and areas that have lower service levels. The Commission should also

⁷ Kurt Schaubach, *This Just In: CBRS Spells High Performance*, Federated Wireless (Mar. 11, 2021), <https://federatedwireless.com/this-just-in-cbrs-spells-high-performance/>.

⁸ See e.g., Frequently Asked Questions, Starlink, <https://www.starlink.com/faq> (advertising 150 Mbps); Home Internet Plans, Viasat.com, <https://www.viasat.com/home-internet/plans/> (advertising 100 Mbps).

prioritize areas where the cost of last-mile infrastructure is high. Even in regions where overall adoption rates are high, challenging geography and low population density can make reaching the last remaining unconnected pockets difficult. Low-income areas where additional assistance is necessary to provide service at affordable rates should also receive priority. Prioritizing areas where there are providers ready and willing to construct last mile connections will ensure that funds are distributed quickly.

Do the criteria in Section 12. Application Objections balance the need to ensure a fair process for an Internet service provider asserting it already serves a proposed priority project area, with the need to award grants in an expeditious manner?

The County supports Section 12 as drafted. The County encourages the Commission to strictly scrutinize claims asserting that an existing agreement to build reliable wireline service exists. The Commission should consider imposing a penalty on providers who object to a proposed project based on an existing agreement to provide service by December 31, 2024, but fail to do so.

3. Coordination with Other Grant Programs.

No comment.

4. Affordability

How should the Commission define affordability?

Service cost is the largest barrier to internet access at home for many families in Santa Clara County.⁹ In the City of San José, most individuals without broadband at home have an income below \$15,000 per year.¹⁰ One survey found that among low-income populations in San José, almost 40% were willing to pay \$10-15 per month for broadband, but that almost 60% were unwilling to pay \$10 per year, including more than 25% who were not willing to pay anything at all.¹¹ Availability of plans in the \$5-10 range would make broadband more available to these households.

⁹ Digital Inclusion Study Strategy Report, City of San José (2017) at 10, http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2798&meta_id=686002.

¹⁰ *Id.* at 12.

¹¹ *Id.*

How should the Commission consider a preference or requirement for affordable offers that are not income-qualified?

The Commission require applicants to provide affordable offers that are not income-qualified. The United States has some of the highest broadband prices in the Organization for Economic Co-operation and Development.¹² Capital costs are one of the largest factors in determining broadband rates. As applicants for FFA assistance are receiving substantial assistance in capital costs for these projects, they should be required to provide service at affordable rates.

Should the Commission consider other low-income preferences or requirements as a percentage of the Federal Poverty Level? Or categorical eligibility such as any service connection in a Qualified Census Tract?

How should the Commission consider low-income or affordable offers that allow for enrollment based on participation in any California public assistance program?

If the Commission limits the eligibility for affordable rates, the Commission should develop criteria that do not require submission of additional information or complex verification processes. Complicated sign-up processes are a deterrent for low-income households in accessing broadband plans.¹³ Eligibility criteria that requires additional information or verification could further limit enrollment by the very participants that need them most. For example, conditioning eligibility based on participation in a California public assistance program could require compliance with various privacy statutes, creating an administratively unwieldy sign-up process.¹⁴ Such a process could deter potential households from applying. Conversely, geographical criteria, such as qualified census tracts would require no additional information from the participant.

The Commission should also offer multiple pathways for eligibility. Eligibility criteria are often rough indicators of need and focusing narrowly on a few criteria could inappropriately exclude households in need of affordable broadband plans. For example, focusing exclusively

¹² How Do U.S. Internet Costs Compare to the Rest of the World?, BroadbandSearch Blog Post, <https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide>.

¹³ Digital Inclusion Study Strategy Report, City of San José (2017) at 13, http://sanjose.granicus.com/MetaViewer.php?view_id=&event_id=2798&meta_id=686002. For example, among households without internet in San José, 32% identified the need to sign a contract as a reason, and almost half identified the need to provide a credit or debit card as a reason.

¹⁴ See e.g., Welfare & Institutions Code §§ 10850 (CalFresh, CalWorks); 14100.2 (Medi-Cal); 17006 (General Assistance).

on geography could obscure the fact that some high income census tracts still contain neighborhoods of largely low-income households. Additionally, low-income households may not be able to provide specific forms of documentation required to determine eligibility. Offering multiple pathways would provide these households more ways to demonstrate eligibility. For example, the Commission could designate qualified census tracts as the primary means of qualification, but also allow households that can demonstrate income below a certain level or participation in a public assistance program to be eligible for affordable broadband plans.

What should be the term for which an affordable or low-income offer is provided and what is the rationale for the term?

The low-income should be provided for as long as the customer is eligible.

5. Eligible Areas

What criteria should the Commission use to determine if an area has reliable service?

The Commission should include only retail service reports made by a primary wireline provider in its analysis, and exclude all reports made by wholesale and/or secondary wireline providers. Operators of middle mile and regional fiber networks might claim to offer service at gigabit or better levels in particular census blocks where they have customers, or even in census blocks that their networks merely touch. In neither case is the service they provide available to consumers or most businesses at affordable prices or in an easily accessible manner. Middle mile and regional fiber operators of this sort should be excluded from the Commission's last mile project eligibility analysis. A primary wireline provider is one which owns the copper or fiber lines which transport the reported service. A secondary wireline provider is one which leases or otherwise obtains access to copper or fiber lines owned by a primary wireline provider.¹⁵

The Commission should also consider past incidents and/or disruption to service in evaluating reliability. The Commission can require existing providers to share data such as total time for service disruption, number of residents impacted by each service disruption. In

¹⁵ See Comments of the Central Coast Broadband Consortium in Response to the Assigned Commissioner Ruling Seeking Comments on the Staff Proposal to Implement the Federal Funding Account Grant Program, Issued September 23, 2021 (Oct. 24, 2021).

addition, the Commission can verify this information based on input from community based organizations and local government agencies.

How should the Commission measure what constitutes a significant number of unserved and underserved households?

The Commission should consider 10% of unserved or underserved households within a given census tract to be a significant number. As of 2021, 85% of California households have home internet connections. The most connected region is the Bay Area, with 91% of households connected. For Californians with an income of more than 200% of the federal poverty line, 96% have home internet.¹⁶ These figures are conservative, as they do not account for the speed of the home internet connections. A 10% threshold of significance, slightly lower than the statewide average, would direct funds to the areas most in need of assistance without unduly restricting the ability of any region to obtain funding.

6. Eligible Entities

No comment.

7. Coordination with State Middle Mile Network

No comment.

8. IOU Broadband Pilots

No comment.

9. Performance Criteria

How should the Commission measure the serviceable life of the infrastructure?

For wireline connections, the Commission should measure the serviceable life by the pole, conduit or other structure hosting the wire. In general, cable installed in conduit can be replaced at relatively low cost compared to the installation of the conduit itself.¹⁷ The FCC's

¹⁶ Hernan Galperin, Thai Le, CETF-USC Statewide Broadband Adoption Survey: Internet Adoption and the "Digital Divide" In California (March 2021), [https://assets.uscannenberg.org/docs/CETF-USC Statewide Broadband Adoption Survey.pdf](https://assets.uscannenberg.org/docs/CETF-USC%20Statewide%20Broadband%20Adoption%20Survey.pdf)

¹⁷ Expected Life Study: Telecommunications and Cable Assets, Nevada Department of Taxation (April 2, 2015) at 4, <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/Meetings/Expected%20Life%20Study-Telecommunications%20and%20Cable%20Assets.pdf>.

current projected the life range of conduit systems between 50 and 60 years.¹⁸ This is consistent with an audit of AT&T Nevada's wireline telecommunication network assets, which estimated that the conduit has a financial life of 50 years.¹⁹ Similarly, the American Wood Protection Association estimates the useful life of wood poles in most of California to be 44.5 years.²⁰ The State Board of Equalization offers guidelines for assessing the life and obsolescence of telecommunications properties.²¹

10. Information Required from Applicants

No comment.

11. Provision of Voice and Other Services

No comment.

12. Government and Community Support

How should the Commission consider the requirement for applicants to address how a proposed application furthers the purpose of a Local Government or Tribal technical assistance grant in project areas for which a grant has been awarded?

The Commission should award points to projects for consistency with existing technical assistance grants in the project area as a component of “existing broadband service need.” The County supports requiring applicants for technical assistance grants to consult with counties, and other agencies in their jurisdictions, which we believe will ensure that technical assistance grant recipients are coordinating on their broadband deployment initiatives. Prioritizing projects that are consistent with the coordinated planning occurring in the project area will promote the orderly and efficient development of broadband infrastructure.

¹⁸ In the Matter of 1998 Biennial Review - Review of Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98-137, Fed. Comm. Comm'n (Dec. 17, 1999), <https://transition.fcc.gov/wcb/ppd/depreciation/documents/currDepRanges.pdf>.

¹⁹ Expected Life Study: Telecommunications and Cable Assets, NEVADA DEPARTMENT OF TAXATION (April 2, 2015), Exhibit 4, <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/Meetings/Expected%20Life%20Study-Telecommunications%20and%20Cable%20Assets.pdf>.

²⁰ Expected Life Study: Telecommunications and Cable Assets, Nevada Department of Taxation (April 2, 2015), Exhibit 20, <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/Meetings/Expected%20Life%20Study-Telecommunications%20and%20Cable%20Assets.pdf>.

²¹ Guidelines for Substantiating Additional Obsolescence for State-Assessed Telecommunication Properties, Cal. State Bd. of Equalization, https://www.boe.ca.gov/proptaxes/pdf/Obsolescence_Guidelines.pdf.

13. Ministerial Review Criteria and Cutoff

What other criteria or range of funding should the Commission consider? For example, should the project amount for ministerial review be some amount between \$10-30 million? How should the per location cost criteria be modified and how should this per location cost be considered?

The Commission should make eligible ministerial approval projects that have a cost per household of up to \$15,000. The Staff Proposal currently sets the maximum cost per household at \$9,300. Broadband installation costs vary significantly based on location, and the areas of the State most in need of assistance are often the areas where installation costs are highest. This includes sparsely populated rural areas where the distance between houses can increase the per household installation costs, and highly urban areas where trenching under paved streets can increase costs. In Santa Clara County, some providers regularly incur \$12,000 in per household costs for broadband deployment. Additionally, material costs for fiber and conduit have increased dramatically in recent months. Increasing the maximum would allow greater flexibility to serve hard to reach areas.

14. Post-Construction

How should the Commission consider post-construction requirements and/or reporting for a period of time? What should they be? How long should the Commission require these requirements and why?

The reporting requirements should last for the life of the longest commitment attaching to a project. The affordability and price commitments that apply to projects funded through the FFA are important to ensure that the public will benefit from the use of public funds to expand broadband infrastructure. Ensuring that prospective purchasers of publicly funded broadband infrastructure are aware of these requirements is essential to smooth transitions of ownership. Notification and execution of an assignment and assumption agreement is minimally burdensome requirement. The Commission can provide standard forms for assignment and assumption of grant obligations to further reduce any burden on grant recipients and prospective purchasers.

15. Other Comments

Letter of Credit

The Commission should revise the Staff Proposal to remove the letter of credit requirement for public agency applicants. The Staff Proposal currently requires an “eligible applicant that does not hold a CPCN issued by the Commission [...] to submit a Letter of Credit.”²² The purpose of the letter of credit is to allow the Commission to recover funds in the event of non-compliance during the 24 month construction period. While such a requirement may be appropriate for private entity applicants, this requirement is inappropriate for public agencies. Public agencies are much lower risks for non-compliance and for defaulting on debt. Additionally, public agencies are constrained by their debt limits.²³ Imposing this requirement could add hundreds of thousands of dollars in unnecessary costs to large scale projects for no benefit.

D. Conclusion

The County appreciates the opportunity to provide input into the State’s planning process for the middle mile network. As delivering this project will require detailed knowledge of existing infrastructure, assets, and communities, ongoing collaboration with local agencies, providers, and community-based organizations will be crucial to its success. We believe Santa Clara County’s strong network of providers, advocates, and public agencies, its acute needs, and its history of innovation would make the county an excellent pilot project for developing models for partnerships that can be replicated statewide. We look forward to the Commission’s final decision on the Ruling and support the Commission’s efforts to move towards the provision of affordable and reliable internet services.

[Signatures on following page]

²² Staff Proposal at A-19.

²³ See California Constitution, Art. XVI, Sec. 18(a).

Respectfully submitted October 29, 2021, at San José, California.

COUNTY OF SANTA CLARA

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